

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ALLEN ONEIL FITZGERALD,	)	
	)	Civil Action No. 15 – 1144
Petitioner,	)	
	)	District Judge Terrence F. McVerry
v.	)	Magistrate Judge Lisa Pupo Lenihan
	)	
SUPERINTENDENT LAWRENCE	)	
MAHALLY and KATHLEEN KANE,	)	
<i>The Attorney General of the State of</i>	)	
<i>Pennsylvania,</i>	)	
	)	
Respondents.	)	

**MEMORANDUM ORDER**

Petitioner, Allen O’Neil Fitzgerald, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on October 20, 2015. (ECF No. 3.) The Petition was referred to United States Magistrate Judge Lisa Pupo Lenihan for review in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D

After a Motion to Dismiss the Petition was filed by Respondents, (ECF No. 17), the Magistrate Judge issued a Report and Recommendation on January 29, 2016, (ECF No. 25), recommending that the Petition be dismissed for lack of jurisdiction as an unauthorized second or successive petition. The Report and Recommendation was served on the parties and they were informed that the deadline to file written objections was February 16, 2016. Petitioner filed Objections on February 9 and 23, 2016.

After an independent review of the record, and consideration of the Magistrate Judge’s Report and Recommendation, and Petitioner’s Objections thereto, the following Order is entered:

**AND NOW**, this 2nd day of March, 2016.

**IT IS HEREBY ORDERED** that the Motion to Dismiss (ECF No. 17) is **GRANTED**.

**IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus (ECF No. 3) is **DISMISSED** for lack of jurisdiction and that a Certificate of Appealability is **DENIED**.

**IT IS FURTHER ORDERED** that the Magistrate Judge's Report and Recommendation (ECF No. 25) is adopted as the Opinion of the Court.

**IT IS FURTHER ORDERED** that the Clerk of Court mark this case **CLOSED**.

**AND IT IS FURTHER ORDERED** that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

s/ Terrence F. McVerry  
Terrence F. McVerry  
Senior United States District Judge

cc: Allen O'Neil Fitzgerald  
FF-3157  
SCI Dallas  
1000 Follies Road  
Dallas, PA 18612

Counsel for Respondent  
*Via CM/ECF*